

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Criminal Justice Committee

BILL: SB 346

INTRODUCER: Senator Ring

SUBJECT: Flag Etiquette

DATE: January 17, 2012

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Cannon	CJ	Pre-meeting
2.	_____	_____	GO	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill requires the Governor to order the flags at all state buildings, facilities, and property to be flown at half-staff from sunrise to sunset on the day of the funeral of any law enforcement officer or firefighter who dies in the line of duty.

This bill creates the following section of the Florida Statutes: 256.015.

II. Present Situation:

The Governor's Office has a written protocol on when and for whom flags may be flown at half-staff.¹

National Flag Protocol

According to the Governor's protocol, by order of the President of the United States or the Governor, the National flag shall be flown at half-staff upon the death of principal figures of the United States or State Government as a mark of respect to their memory, pursuant to 4 U.S.C. Section (7)(m) and United States General Service Administration Flag Policy. The National flag is flown at half-staff at all federal buildings, all state-owned buildings and, in most cases, all courthouses and city halls² throughout Florida for specified periods for the following persons and occasions:

¹ *Flag Protocol, National and State Flags*, Office of the Governor (undated document) (on file with the Committee on Criminal Justice).

² If the decedent is a member or former member of Congress from Florida, the flag is flown at half-staff at all courthouses and city halls in the decedent's district. If the decedent is a member or former member of the Florida Legislature, or a state,

- President or former President of the United States.
- Vice President or former Vice President of the United States.
- Chief Justice, former Chief Justice, or an Associate Justice of the U.S. Supreme Court.
- Speaker of the U.S. House of Representatives.
- Secretary of an executive or military department.
- President Pro Tempore of the U.S. Senate.
- Majority Leader or Minority Leader of the U.S. House of Representatives.
- Governor or former Governor of Florida.
- Member or former members of the Florida Cabinet.
- Justice or former Justice of the Florida Supreme Court.
- Member or former member of Congress from Florida.
- Member or former member of the Florida Legislature.
- State, county, district, or city official.
- Prominent citizens.
- National occasions proclaimed by the President of the United States.

The Governor's protocol further states that, in 2007, Congress passed the "Army Specialist Joseph P. Micks Federal Flag Code Amendment Act of 2007" (now codified in 4 U.S.C. Section (7)(m)). This law provides that the Governor may proclaim that the National flag shall be flown at half-staff in the event of the death of a member of the Armed Forces who dies while serving on active duty. The Governor, by proclamation, may have the flag flown at half-staff at the State Capitol and the county courthouse and city hall where the deceased Armed Forces member resided.

State Flag Protocol

The Governor's protocol further states that the Governor may order or proclaim that the State flag shall be at half-staff upon the death of principal figures of the United States or State Government as a mark of respect to their memory, consistent with 4 U.S.C. Section (7)(m) and United States General Service Administration Flag Policy and following a Presidential proclamation or order or upon the Governor's initiative. The State flag is flown at half-staff at all state-owned buildings and, in most cases, all courthouses and city halls³ throughout Florida for specified periods for all of the persons previously described in regard to flying the National flag at half-staff.

The Governor's protocol further states that, consistent with the "Army Specialist Joseph P. Micks Federal Flag Code Amendment Act of 2007," the Governor may proclaim that the State flag shall be flown at half-staff in the event of the death of a member of the Armed Forces who dies while serving on active duty. The Governor, by proclamation, may have the flag flown at half-staff at the State Capitol and the county courthouse and city hall where the deceased Armed Forces member resided.

county, district, or city official, the flag is flown at half-staff at all courthouses and city hills in the decedent's jurisdiction. If the decedent is an Armed Forces member, the flag is flown at half-staff at the county courthouse and city hall where the decedent resided.

³ *Id.*

Of particular relevance to the bill, the Governor's protocol further states that, if timely requested, the Governor may approve flying the State flag at half-staff for a police officer or firefighter who dies in the line of duty and for a state employee. The flag is flown at half-staff at the city hall and courthouse where the deceased lived. The Governor may use his discretion as to whether he/she will grant any request for state buildings or facilities or other local buildings or facilities (i.e., police department, fire station, etc.) on a case-by-case basis. The Executive Assistant of the Governor's Legal Office notifies the requestor by e-mail if the request is granted and the requestor notifies the appropriate local officials. The flag is flown one day only, from sunrise to sunset, giving deference to the family's day of preference.

The Governor's protocol further indicates that the Executive Office of the Governor (EOG) is notified of the death of a prominent citizen, Armed Forces member, police officer, firefighter or public official. The notification will usually come from a federal, state, district, county, or city official, department head, or family member or friend of the family.

Accompanying the Governor's protocol is a document entitled "Frequently Asked Questions." Information provided in response to one of the questions indicates that a constituent may request flags be flown at-half-staff for any reason not addressed in the protocol. The Governor has the discretion whether to grant or deny the request.

Statutes/Flag Display

While there are currently a number of statutes requiring display of the National flag, the State flag, and the POW-MIA flag,⁴ there do not appear to be any statutes requiring that a flag be flown at half-staff for particular persons or in particular circumstances.

There does not appear to be any statute specific to flag display involving a law enforcement officer who dies in the line of duty. However, s. 256.15, F.S., provides that the official state Firefighter Memorial Flag to honor firefighters who have died in the line of duty may be displayed at memorial or funeral services of firefighters who have died in the line of duty, at firefighter memorials, at fire stations, at the Fallen Firefighter Memorial located at the Florida State Fire College in Ocala, by the families of fallen firefighters, and at any other location designated by the State Fire Marshal.

III. Effect of Proposed Changes:

The bill requires the Governor to order the flags at all state buildings, facilities, and property to be flown at half-staff from sunrise to sunset on the day of the funeral of any law enforcement officer or firefighter who dies in the line of duty.

The bill does not specify which flag or flags are to be lowered. It is unclear how the Governor's Office becomes aware that a law enforcement officer has died in the line of duty and the date of the funeral.

⁴ See ss. 256.01, 256.02, 256.011, 256.032, 256.11, 256.12, 256.13, 256.14, 256.15, and 1000.06, F.S.

The bill would significantly depart from the Governor's protocol and limit the Governor's discretion. (See discussion of this protocol in the "Present Situation" section of this analysis.)

The effective date of the act is July 1, 2012.

Other Potential Implications:

EOG staff has indicated some concerns regarding the bill. First, according to EOG staff, the lowering of the National flag is controlled by federal law. EOG staff states that any state law directing the Governor to order the lowering of the flags at all state buildings would be preempted by the federal guidelines for the National flag.⁵

Second, EOG staff states that the lowering of the flag is currently a matter of Governor's discretion. EOG staff notes that the Governor has an adopted protocol for flag lowering and this protocol provides for lowering of the State flag for numerous officials and persons, including law enforcement officers and firefighters. In contrast, the bill only provides for lowering of flags for law enforcement officers and firefighters.

Third, EOG staff states that the requirement to lower the flag on the day of the funeral may not be possible from a logistical standpoint. According to EOG staff, the funeral information is not always known sufficiently in advance to provide for the executive order and oftentimes funerals are arranged during weekends when flags aren't always raised. Additionally, EOG staff notes that the bill is inconsistent with the Governor's protocol regarding where the flag is lowered.

Fourth, EOG staff states that the bill would create an inequity between fallen soldiers and fallen police and firefighters, by bestowing a greater honor to the police and firefighters than is currently bestowed on members of the Armed Forces killed while on active duty.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

⁵ E-mail from EOG staff to staff of the Senate Committee on Criminal Justice, dated January 19, 2012 (on file with this committee).

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

EOG staff did not indicate that the bill would have a fiscal impact on the Governor's office or state agencies.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.